

Court of King's Bench of Alberta

Citation: 1646274 Alberta Ltd v 2402806 Alberta Ltd, 2026 ABKB 289

Date: 20260415
Docket: 2303 04090
Registry: Edmonton

Between:

1646274 Alberta Ltd

Plaintiff

- and -

2402806 Alberta Ltd and Jonathan Williams

Defendants

**Memorandum of Decision
of
Applications Judge B.W. Summers**

Introduction

[1] The legal issue addressed in this Memorandum of Decision is whether a Statement of Claim may be amended to add defendants after a consent judgment has been granted to the plaintiff against all previously named defendants.

[2] The short answer is that such an amendment is not permissible as the Court is *functus officio*.

Procedural Background

[3] On March 7, 2023 the Plaintiff commenced this action against 2402806 Alberta Ltd and Jonathan Williams (collectively "Current Defendants") with respect to \$500,000 advanced by the Plaintiff for a joint venture developing real estate. The Current Defendants filed a Statement of Defense.

[4] On March 4, 2024 the Plaintiff filed an application (“the Application”) to add MJV Construction Ltd, Jai Kumar, RVNU Capital Corp, Decom Consulting Ltd and Noreen Samantha Hoskins (“Proposed Defendants”), alleging that they schemed with the Current Defendants to defraud the Plaintiff.

[5] Affidavits were filed in support of and in opposition to the Application. Questioning on affidavits occurred.

[6] The Application was adjourned to be heard in Special Chambers. While the Plaintiff and the Proposed Defendants waited to secure a date for the Application, the Current Defendants consented to a judgment in favour of the Plaintiff (“Consent Judgment”). The Consent Judgment was granted on November 28, 2025.

[7] As counsel for the Plaintiff could not secure a Special Chambers date, he brought the Application before me in morning chambers. Following oral argument, I asked for and received written briefs.

Discussion

[8] The Application is brought under r 3.74, which states:

3.74(1) After close of pleadings, no person may be added, removed or substituted as a party to an action started by statement of claim except in accordance with this rule.

(2) On application, the Court may order that a person be added, removed or substituted as a party to an action if

- (a) in the case of a person to be added or substituted as plaintiff, plaintiff-by-counterclaim or third party plaintiff, the application is made by a person or party and the consent of the person proposed to be added or substituted as a party is filed with the application;
- (b) in the case of an application to add or substitute any other party, or to remove or to correct the name of a party, the application is made by a person or party and the Court is satisfied the order should be made.

(3) The Court may not make an order under this rule if prejudice would result for a party that could not be remedied by a costs award, an adjournment or the imposition of terms.

[9] Counsel for the Plaintiff noted that amendments to pleadings should be allowed and can be brought at any time, even if the party seeking to amend them is careless or late: *Dow Chemical Canada Inc v Nova Chemicals Corporation*, 2010 ABQB 524 at para 20 (“*Dow Chemical*”). This is, however, subject to four major exceptions which were outlined by the Court in *Dow Chemical*, at para 21:

- (1) the amendment would cause serious prejudice to the opposing party, not compensable in costs;

- (2) the amendment requested is “hopeless” (an amendment that, if it were in the original pleadings, would have been struck);
- (3) unless permitted by statute, the amendment seeks to add a new party or a new cause of action after the expiry of a limitation period; and
- (4) there is an element of bad faith associated with the failure to plead the amendment in the first instance.

[10] Counsel for the Plaintiff further argued that pleadings can be amended at any time, including after a judgment has been entered. The Plaintiff’s position rests on the following passage from the Alberta Court of Appeal in *Brar v Roy*, 2005 ABCA 269 (“*Brar*”) (at paragraph 17):

Under Rule 132 of the *Alberta Rules of Court* the court may allow a party to amend pleadings at any stage of the proceeding in such manner as may be necessary to determine the real issue in question between the parties. The court has a very broad discretion: (citations omitted). Amendments may be allowed after judgment has been granted *Travel Machine Ltd. v. Madore* (1983), 1983 CanLII 3058 (ON SC), 143 D.L.R. (3d) 94 (Ont. H.C.J.); *Conmac Western Industries v. Robinson*, 1993 CanLII 7058 (AB KB), [1993] 6 W.W.R. 375 (Alta. Q.B.). (emphasis added).

[11] In my opinion, *Brar* is completely distinguishable. The amendment sought in that case was to allow a defendant to amend his pleading to refer to the *Limitations Act* rather than to the repealed *Limitation of Actions Act*. The Court of Appeal said that there was no prejudice to the plaintiff as the parties and the trial judge proceeded on the basis that it was the *Limitations Act* in issue, and not the repealed legislation.

[12] In allowing the amendment in *Brar*, the Court of Appeal referred to *Travel Machine Ltd v Madore* (1983), 1983 CanLII 3058 (ON SC) (“*Travel Machine*”) and *Conmac Western Industries v Robinson*, 1993 CanLII 7058 (AB KB) (“*Conmac*”). *Travel Machine* was an appeal from a small claims court decision to the Ontario High Court. The amendment was to have the pleading reflect what was in evidence at the trial and was not prejudicial to the respondent. *Conmac* involved an amendment to pleadings after the trial but before the judgment had been delivered.

[13] In this case before me, the amendment sought is not to have the pleadings amended to reflect what was heard in the prior proceeding and granted in the judgment. Rather the amendment is related to adding completely different corporations and individuals who are not even parties to the action or the Consent Judgment.

[14] The Proposed Defendants argue for a narrower interpretation to r 3.74: pleadings, including the addition of new parties, may be amended *only* until a final judgment is entered. Once a final judgment is entered, the court hearing the matter is *functus officio* and no longer has the jurisdiction to amend the pleadings.

[15] The Supreme Court of Canada has held that a court is *functus officio* and loses jurisdiction once a formal judgment has been entered: *Canadian Broadcasting Corp v Manitoba*, 2021 SCC 33. The Court noted that this doctrine is just one of several legal principles designed to promote finality and stability in judgments (see paragraphs 32-36).

[16] A consent judgment has the same force and effect as a judgment delivered after a trial: *Lofthaug v Canadian Immigration Specialists Ltd*, 2011 ABQB 609 at para 36.

[17] The decision of this Court in *Wensel v Wensel*, 1975 CanLII 227 (ABKB) ("*Wensel*") is on point. In that case the applicant and respondents, joint owners of lands, applied for and were granted a consent order for partition of the lands. The Municipal District of Foothills 31 applied to be added as a respondent and to set aside the order. After determining that the consent order was a final judgment, the Court dismissed the municipal district's application stating (at paragraph 15):

[15] A judgment having been obtained and entered, the Municipal District of Foothills now applies to be added as a party to the proceedings. While there is no doubt that the court has the power, in proper circumstances, to add a party to an action, once there has been a final adjudication and entry of the order or judgment no one may be added as a party until that order or judgment is first set aside.

[18] In this case before me the Plaintiff contends that *Wensel* is distinguishable on the basis that in that case the municipal district's application was commenced *after* the consent judgment was granted, but in this case the Application was commenced *before* the Consent Judgment was granted.

[19] I fail to see how this distinguishing fact undermines the holding in *Wensel* that additional parties can only be added to an action *until* a final judgment has been entered and not after.

[20] Finally, I note that the Plaintiff entered into the Consent Judgment on its own accord. Nothing on the record before me suggests that there was any reason that the Plaintiff was compelled to proceed with the Consent Judgment before completing the Application. Furthermore, subject to limitations issues, the Plaintiff may commence a separate action against the Proposed Defendants.

Conclusion

[21] The Application is dismissed.

[22] Costs may be spoken to within 30 days of the date of this Memorandum of Decision if the parties cannot agree on costs.

Heard on the 22nd day of January, 2026.

Dated at the City of Edmonton, Alberta this 15th day of April, 2026.

B.W. Summers
A.J.C.K.B.A.

Appearances:

Sal Tinajero
HTM Law LLP
for the Plaintiff

No one appearing
for the Current Defendants

Ian Mahood
Kenny Law
for the Proposed Defendants